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Attorneys for Plaintiff, VSolvit LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VSOLVIT LLC, a Nevada limited liability company

Case Number 2:23-cv-00454-JAD-DJA

Plaintiff,

**ORDER GRANTING UNOPPOSED
MOTION TO EXTEND
TEMPORARY STAY TO 8/1/24**

SOHUM SYSTEMS, LLC, et al

ECF No. 38

Defendants.

Plaintiff, VSolvit, LLC (“VSolvit” or “Plaintiff”), in the above-captioned action, by and through its undersigned counsel, pursuant to Federal Rule of Civil Procedure 7(b) and LR IA 6-2, hereby moves this Honorable Court, with the consent of Defendants, Sohum Systems, LLC (“Sohum”) and Creative Information Technology, Inc. (“CITI”) (collectively, “Defendants”), to enter an Order extending the stay of all proceedings in this litigation for a period of 180 days. As

1 grounds therefore, Plaintiff relies on the Memorandum of Points and Authorities submitted
 2 herewith.

3 WHEREFORE, VSolvit respectfully requests that this Honorable Court grant its Consent
 4 Motion and enter an Order extending the temporary stay of all proceedings in this litigation for
 5 180 days, to and including August 1, 2024.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 VSolvit, pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7-2, submits
 8 this Memorandum of Points and Authorities in support of its Consent Motion to Extend
 9 Temporary Stay and respectfully requests that this Honorable Court grant the motion and extend
 10 the stay of all proceedings in this action for a period of 180 days. In support thereof, VSolvit
 11 states as follows:

12 **I. INTRODUCTION**

13 This matter arises out of a dispute between former government contracting teaming
 14 partners. ECF No. 1 (Compl.) ¶ 1; ECF No. 29 (Defs.’ Answer) ¶ 1. Specifically, the parties
 15 entered into a teaming agreement to prepare for bidding on a task order, namely, the USDA FPAC
 16 Farm Programs Software Delivery (“Beech”) task order, which was expected to be issued by the
 17 United States Department of Agriculture (“USDA”) within weeks of this action’s commencement
 18 in March 2023. ECF No. 1 ¶ 34; ECF No. 29 ¶ 17. However, the USDA delayed Beech’s release
 19 several times. The USDA eventually issued the Beech request for proposals (“RFP”), and, after
 20 additional extensions, written proposals were due in response to the RFP on July 5, 2023. After
 21 the proposal deadline, the USDA amended the RFP again and permitted revised price proposals.

22 In the run up to the release of Beech, earlier this year, Defendants terminated the parties’
 23 teaming agreement. ECF No. 1 ¶¶ 67-68; ECF No. 29 at 33-34. Contemporaneously therewith,

1 Defendants informed VSolvit that they intended to bid on Beech independent of VSolvit, which
 2 prompted VSolvit to bring this action, alleging anticipatory breach of contract and breach of the
 3 implied covenant of good faith and fair dealing. *See generally* ECF No. 1. VSolvit also sought
 4 a Temporary Restraining Order and Preliminary Injunction to prohibit Defendants from
 5 submitting a bid proposal outside the VSolvit team, which were denied. ECF No. 33. This Court
 6 denied injunctive relief on May 9, 2023. ECF No. 33.

7 Subsequent thereto, at the Rule 26(f) conference in this case, the parties conferred
 8 regarding how this case should progress. All parties agreed that the eventual award of the Beech
 9 task order would guide these proceedings. If, for instance, the USDA awarded the Beech task
 10 order to VSolvit, VSolvit would likely suffer no damages, and it would dismiss its case. If a third
 11 party (i.e., not Plaintiff or Defendants) won the award, it was possible VSolvit would dismiss its
 12 claims, depending on the feedback it received from the USDA about its bid. And, if the
 13 Sohum/CITI team won award of the Beech task order, the matter would proceed on any claims
 14 for damages that VSolvit might have. The parties were unable to meaningfully participate in
 15 discovery or progress this matter toward a litigated resolution without knowing how the USDA
 16 would award the Beech task order. Accordingly, on June 13, 2023, VSolvit, with Defendants'
 17 consent, moved for a temporary stay of this litigation for a period of 120 days while the parties
 18 waited for the USDA to make an award decision. ECF No. 34. On July 3, 2023, this Court
 19 entered a stay of all proceedings until November 1, 2023. ECF No. 35.

20 After the initial stay was entered, Defendant Sohum (teaming with CITI) and Plaintiff
 21 VSolvit submitted proposals in response to the RFP. After initial evaluations, Sohum and VSolvit
 22 were identified as being among the most highly rated participants in the Beech procurement. On
 23 September 29, 2023, VSolvit was notified that Sohum had been awarded the Beech contract.

1 On October 10, 2023, VSolvit filed a post-award bid protest with the U.S. Government
 2 Accountability Office (“GAO”) challenging the USDA’s award to Sohum on several grounds.
 3 Because a GAO bid protest normally takes several months to resolve, on November 3, 2023,
 4 VSolvit, with the consent of Defendants, moved the Court to further extend the stay by a period
 5 of 90 days. ECF No. 36. On November 7, 2023, the Court agreed and extended the stay of
 6 proceedings to February 1, 2024. ECF No. 37.

7 On January 9, 2024, the USDA issued a Notice of Corrective Action (“Corrective Action”)
 8 with respect to the issues raised in the VSolvit protest. Copy attached as Exhibit A. As part of
 9 the Corrective Action, Phase II offerors on the Beech procurement, including Sohum (with CITI)
 10 and VSolvit, will be permitted to submit new price proposals and participate in new oral
 11 presentations. The parties’ submission of revisions to their respective pricing proposals,
 12 preparation for oral presentations before the USDA, USDA’s evaluation, and USDA’s new
 13 award, will likely take several months given the amount of work involved in completing those
 14 efforts. Depending on the result of the USDA’s new award decision, one or more parties may
 15 initiate a further protest. At the end of this process, the parties will determine how to proceed
 16 with this action, including whether it should go forward or be dismissed.

17 Given that the outcome of the Corrective Action (and eventual new award) may affect this
 18 litigation in material ways, the parties met and conferred, and they agree that extending the stay
 19 in this litigation is appropriate to avoid potential duplicative discovery and unnecessary litigation.

20 **II. ARGUMENT**

21 “The Court has discretion to grant a stay, especially if doing so would serve the interests
 22 of judicial economy and efficiency.” *Deutsche Bank Nat’l Tr. Co. as Trustee for the Holders of*
 23 *GSAMP Trust 2005-AHL Mortgage Pass-Through Certificates, Series 2005-AHL v. Westcor*

1 *Land Title Ins. Co.*, No. 2:19-cv-00303-GMN-EJY, 2019 WL 8161748, at *1 (D. Nev. Sept. 19,
 2 2019) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). The Court’s discretion is “broad,”
 3 as the power to issue a stay is “incidental to the power inherent in every court to control the
 4 disposition of the causes of action on its docket with the economy of time and effort for itself, for
 5 counsel, and for litigants.” *KBW Assocs., Inc. v. Jaynes Corp., Inc.*, No. 2:13-cv-01771-GMN-
 6 CWH, 2015 WL 631287, at *3 (D. Nev. Feb. 13, 2015) (citing *Landis*, 299 U.S. at 254). In
 7 evaluating whether a stay should be granted, the Court must consider “the competing interests at
 8 stake, including: (1) the possible damage which may result from a stay, (2) the hardship or
 9 inequity which a party may suffer in being required to go forward, and (3) ‘the orderly course of
 10 justice measured in terms of simplifying or complicating the issues, proof, and questions of law
 11 which could be expected to result from a stay.’” *Id.* (quoting *Lockyer v. Mirant Corp.*, 398 F.3d
 12 1098, 1110 (9th Cir. 2005)). The Ninth Circuit has held that a “stay pending resolution of an
 13 independent proceeding[]” that bears upon the case is appropriate regardless of “whether the
 14 separate proceeding[] [is] judicial, administrative, or arbitral in character” *Levya v. Certified
 15 Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (citations omitted).

16 Applying the foregoing authorities to the instant case, an additional 180-day stay of all
 17 proceedings is appropriate. First, the parties agree that an extended stay is appropriate.
 18 Accordingly, no injury will result from the Court extending the stay. To the contrary, injury is
 19 far more likely to ensue if a stay is *not* entered. As noted above, the USDA has taken Corrective
 20 Action with regards to its evaluation of the proposals to the RFP and will be issuing a new award
 21 decision. The final award of the Beech task order to VSolvit is likely to result in a prompt
 22 resolution of this case, without the need for discovery or further judicial intervention. Absent an
 23 extension of the stay, the parties could be forced to engage in unnecessary discovery and/or

1 motions practice that will be rendered moot if VSolvit is ultimately awarded the Beech task order
2 (following re-evaluation by the USDA). Furthermore, prior to final confirmation of the award of
3 the Beech task order (regardless of the identity of the eventual awardee), the parties cannot engage
4 in meaningful discovery related to critical issues, including causation and damages. Without an
5 extension of the stay, the parties would need to either (a) provide interim discovery responses or
6 deposition testimony, only to revise those responses after the final confirmation of the Beech
7 award; or (b) delay discovery until the final confirmation of the Beech award is made, which
8 could result in future delays impacting the Court's docket. In addition, if discovery were to take
9 place now, the parties may be required to share confidential and proprietary information related
10 to their yet-to-be-submitted revised proposals, compromising the integrity of the bidding process.

11 Second, the parties will experience hardship if a stay is not entered. As noted above, key
12 issues to the ultimate resolution of this case will remain uncertain until the Beech task order is
13 finally confirmed by the USDA's new award decision following the Corrective Action process.
14 Absent an extension of the stay, the parties will likely incur duplicative discovery and deposition
15 costs and may incur fees and costs unnecessarily.

16 Third, entering a stay would promote the orderly course of justice and simplify the issues.
17 Most notably, the final confirmation of the Beech task order award could resolve the case entirely,
18 which would alleviate the burden this case has on the Court's docket. The final confirmation of
19 the award will also simplify and streamline the factual and legal issues for the parties. As noted
20 in the original motion to stay, with regard to most government contracts, a disappointed bidder
21 may request a "debriefing" or tailored feedback about their bid and the reasons the bid was not
22 selected for award. Debriefing opportunities were made available for the initial Beech award.
23 That is likely to occur again as the USDA has taken corrective action with regard to the Beech

1 procurement, and, therefore, will be re-evaluating bidders' pricing proposals before issuing a new
 2 award decision. The debriefing data provided by the USDA will be a critical component of all
 3 parties' cases and will require the parties' significant attention in discovery.

4 In sum, extending the stay of these proceedings will not cause prejudice to either party or
 5 to the Court's calendar. To the contrary, extending the stay is very likely to streamline these
 6 proceedings or eliminate them altogether. The parties agree that extending the stay is appropriate
 7 pending the final confirmation of award of the Beech task order. This Court accordingly should
 8 extend the stay of these proceedings for a period of 180 days, i.e., until or about August 1, 2024.

9 **III. CONCLUSION**

10 For all of the foregoing reasons, Plaintiff, VSolvit, LLC, respectfully requests that this
 11 Honorable Court grant the foregoing Unopposed Motion and enter an Order that extends the
 12 temporary stay of all proceedings in this action for a period of 180 days, to August 1, 2024.

13 Dated: January 31, 2024

Respectfully Submitted,

14 **VSolvit, LLC**

15 By Counsel:

16 /s/ Maurice Verstandig

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ORDER

With good cause appearing, IT IS ORDERED that the unopposed motion to extend the temporary stay of this case until August 1, 2024, to allow the USDA's corrective-action process to be completed [ECF No. 38] is GRANTED. This case is STAYED until August 1, 2024.

U.S. District Judge Jennifer A. Dorsey
Dated: February 2, 2024